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BY CM/ECF

October 1, 2020

Re: Slate Hill Daycare Center Inc. v. Republic-Franklin
Insurance Company, No. 7:20-cv-03565-PMH

The Honorable Philip M. Halpern
United States Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Halpern:

Defendant Republic-Franklin Insurance Company (“Republic-Franklin”) respectfully requests that the Court take judicial notice of the enclosed decision in connection with Defendant’s fully briefed motion to dismiss. (*See* Dkt. No. 24).

On September 29, 2020, in *It’s Nice, Inc. v. State Farm Fire & Casualty Co.*, Case No. 20 L 547 (Ill. Cir. Ct. Sept. 29, 2020), the Circuit Court for the 18th Judicial Circuit of Illinois dismissed with prejudice a restaurant’s claims seeking coverage for loss of business income caused by social distancing orders that limited in-restaurant dining. The court held that “financial losses as a result of the closure orders” are not “direct physical loss” and regardless “the virus exclusion applies.” Copies of the decision and the oral argument transcript are attached as Exhibit A.

In addition, Republic-Franklin’s notice of supplemental authority dated September 30, 2020 (ECF No. 34) contained a typographical error. The court’s ruling in *Plan Check Downtown III, LLC v. AmGUARD Insurance Co.*, No. 2:20-cv-06954 (C.D. Cal. Sept. 16, 2020) held that Plaintiff had ***not*** suffered “direct physical loss of or damage to” property as a result of social distancing orders and rejected the business owner’s argument that “loss of use” was sufficient.

Respectfully,

/s/ Michael J. Garvey
Michael J. Garvey

The Honorable Philip M. Halpern

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October 1, 2020

Enclosure

cc: Bryce L. Friedman
All Counsel